

TOPIC: THE SCOPE OF SECTION 4(2) OF THE CONTRACTS ACT 1950

(REVISED 1974)

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### III

#### PREFACE

The purpose of this project paper is to discuss and to find the solution as to what extent does Section 4(2) of the Contracts Act, 1950 (Revised 1974) cover. This paper is intended to deal as to when the acceptance takes place as against the proposer and as against the acceptor in different forms of communication used i.e. post, telegram, telephone, telex, etc.

In this dissertation the writer has restricted her area of research to the topics in which Section 4(2) of the Contracts Act, 1950 (Revised 1974) form the crux of this research paper.

By virtue of Section 4(2), the Contracts Act, 1950 (Revised 1974) provides that:

"The communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer."

This section is said to cover postal communication.

Dispute arises when dealing with instantaneous means of communication as to when and where the acceptance takes place. As to such a problem, the writer wishes to find the solution

based on legal opinions and cases. This paper offers some explanations and opinions as to when and where the communication of an acceptance takes place.

However, it is distressing to note that the scope of the study has been substantially reduced due to the lack of Malaysian cases to support the argument. There is no single volume that provides a survey of the whole subject of Contract Law in this country. Instead the writer has to rely on the Indian and Common Laws decisions.

In the course of writing this project paper, the writer has often been confronted with uncertainties in the local laws. On such occasions, the writer was compelled to look at English and Commonwealth sources, especially those of India and Australia.

The very nature of this paper requires a paper work research without much field work. Most of the materials relied on were cases and articles wrote on the subject. This was possible with the full cooperation and assistance of the staffs at the Perpustakaan Tun Razak, Institute Technology MARA, Shah Alam and the University of Malaya Law Library.

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## CHAPTER 1

### 1. FORMATION OF CONTRACT

In order to decide whether the parties have reached an Agreement it is usual to inquire whether there has been definite offer by one party and an acceptance of that offer by the other party.

Agreement is usually reached by the process of proposal or offer and acceptance. <sup>11-c</sup> Where this is so, ~~that~~ law requires that there be proposal ~~on acceptance term~~ which receives an unqualified acceptance from the person to whom it is made.

In setting out the provisions relating to the formation of An Agreement the Contracts Act, 1950 (Revised - 1974) employs the word "proposal" instead of "offer" (a term employed under English Law).

A proposal is defined in Section 2 (a) of the Contracts Act as follows :-

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence he is said to make a proposal.

An offer or proposal is only effective when it is communicated.

An offer may thus be Contrasted to an option and an advertisement.

An option is merely an undertaking to keep the offer open for a certain period. An advertisement generally is only an attempt to induce offers and is not an offer by itself.